Supreme Court, U.S.
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No. 95-1922

In The
Supreme Court Of The United States
October Term, 1995

WELDON L. RICKETTS,
Petitioner

v.

CITY OF HARTFORD; BERNARD SULLIVAN; SAL GALLO; ROB DAVIS; JOHN DEMAIO; FRANK SANZO; ARMAND LUPO; MATTHEW RIVERA; PAUL CHERNIAK; MARK PAWLINA; MICHAEL FALLON and THOMAS DONOVAN,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

I. Relevant Factual Background

On August 12, 1987, several uniformed police officers were engaged in a lengthy pursuit in a largely residential area of a black man, Timothy Moore, suspected of assault and attempted robbery in Hartford, Connecticut. This chase continued through a soccer field where the Petitioner, Weldon L. Ricketts, was coaching a youth soccer team. An adult soccer team was also on the field. None of the soccer players or coaches assisted the officers in their efforts to apprehend the suspect, as he ran onto the crowded field, and some even obstructed the officers pursuing Mr. Moore (See Petitioner's Appendix at 8A, hereinafter "Pet. App. at _____"). Mr. Moore eventually fell on the lawn of a housing complex across the street from the soccer field, and a struggle ensued as the officers took him into custody. A hostile crowd of bystanders came close to the arresting officers, while other police officers engaged in crowd control.

The Petitioner, Weldon Ricketts, engaged the arresting officers by grabbing or jumping on one or more of the officers, and a brief struggle followed, after which the Petitioner was arrested and taken into custody, being placed in a nearby police vehicle (Pet. App. at 9A to 10A).

The Petitioner asked to be taken to a hospital where he was examined and no serious injuries were documented. (Pet. App. at 12 A to 14A). Although the Petitioner sought medical care for his alleged injuries over a several year period after the subject incident, he conceded at trial that two orthopedists found that he suffered from degenerative arthritis prior to the incident, and that Mr. Ricketts never revealed these findings to his primary treating physician.

II. Procedural History of the Case

The Petitioner, Weldon L. Ricketts, brought an action pursuant to 42 U.S.C. Section 1983, alleging multiple violations of his constitutional rights, directed against the defendants-appellees, Sal Gallo, Rob Davis, John DeMaio, Frank Sanzo, Armand Lupo, Matthew Rivera, Paul Cherniak, Mark Pawlina, Michael Fallon and Thomas Donovan, as well as the City of Hartford and its Chief of Police, Bernard Sullivan. At trial, the Petitioner withdrew claims as to three other original defendants, and still other defendants had been removed from the case prior to trial when the district court granted those defendants' Motion for Summary Judgment (Pet. App. at 3A to 4A).

Following a jury trial, judgment was entered in favor of the relevant defendants-appellees on all claims on October 15, 1993. The Petitioner moved for a new trial, and an order entered on April 6, 1994, denying same. (Pet. App. at 2A)

The Petitioner appealed to the Court of Appeals for the Second Circuit from the judgment dismissing his complaint, and from the district court's order denying his Motion for a New Trial. (Pet. App. at 3A). Various evidentiary rulings of the trial court were the subject of the appeal, and the Petitioner also challenged the composition of the venire panel from which his jury was chosen, claiming a violation of his fifth amendment right to equal protection, as the panel was almost entirely comprised of white jurors. The Petitioner had moved to strike the jury panel after the jury was selected, having failed to challenge the racial composition of the venire prior to jury selection.

At the district court's hearing on the Petitioner's Motion to Strike the Jury Panel, he offered no evidence to

support his claim of intentional discrimination by the court officials in selecting jurors, but relied upon the record of a hearing stemming from a challenge to the same jury venire, based upon a sixth amendment violation (Pet. App. at 23A to 24A). The district court found at the Jackman pretrial hearing that there was no intentional discrimination. (Pet. App. at 23A-24A). That finding was then applied by the district court at the Petitioner's hearing on the Motion to Strike the Jury Panel. See United States v. Jackman, 46 F.3d 1240 (2d Cir. 1995).

The district court denied the Petitioner's Motion to Strike the Jury Panel, expressly finding that there was no intentional discrimination on the part of the court officials and, alternatively, that the Petitioner's motion was untimely. The Petitioner did not contend on appeal that the underepresentation of minorities on his jury was a product of intentional discrimination (Pet. App. 24 - 25A).

The Court of Appeals for the Second Circuit (Winter, Mahoney and Godbold, Js.) affirmed the judgment entered in the district court, with Judge Godbold dissenting on the issue of a denial of equal protection based upon the jury composition.

The Petitioner filed a petition for rehearing and a suggestion for rehearing en banc before the court of appeals, which petitions were denied with only a minor amendment to the court's slip opinion not related to the equal protection/jury selection issue.

The Petitioner then filed this Petition for Writ of Certiorari.

REASONS FOR DENYING WRIT

I. It Is Undisputed That The Underrepresentation Of Minorities In The Venire Was Unintentional

In his zeal to attain additional review, the very first thing the Petitioner represents to this Court is that "[i]n the present case, the majority opinion incorrectly concluded that the record does not support intentional discrimination." (Pet. App. at p. 11) To the contrary, the court of appeals expressly stated that, "[o]n appeal, Ricketts failed even to contend that the underrepresentation of minorities on his jury resulted from their intentional exclusion." (Pet. App. 24 - 25A) Additionally, the district court determined that there was no intentional discrimination by court officials. See United States v. Jackman, 46 F.3d 1240, 1248 (2nd Cir. 1995) ("Gary Jackman's venire was clearly the product of misfeasance (although, as the majority notes, not malfeasance) of the Hartford jury clerk's office.") (Walker, J., dissenting). Thus, the petition should be denied. As a matter of fact and law, there was no intentional exclusion of minorities from the venire.

It is equally undisputed that, for a civil litigant to sustain an equal protection challenge such as the one at bar, he must establish intentional discrimination. McClesky v. Kemp, 481 U.S. 279, 292 (1987); Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 265 (1977).

Rather than address this reality, the Petitioner seeks instead to obscure the issue by clutching to dicta contained in the court of appeals' dissenting opinion. In the dissent, Judge Godbold opined that the decision of the Second Circuit in United States v. Jackman, 46 F.3d at 1240 required reversal of the instant matter. This observation

is utterly unavailing, however, because Jackman involved only a sixth amendment challenge; it did not consider the element of intentional discrimination to the extent required in a fifth amendment challenge.[1]

Cognizant of this distinction, the majority opinion in the case below recognized that, at best, the record in light of Jackman arguably raises only a presumption of discriminatory intent. (Pet. App. 23A) The Respondents acknowledge that Castaneda v. Partida, 430 U.S. 482 (1977), establishes that a habeas petitioner bringing an equal protection challenge can raise a rebuttable presumption of discriminatory purpose that the government, in turn, must rebut.[2] As the court of appeals aptly emphasized, while the district court's pretrial hearing in Jackman established a sixth amendment violation that required reversal of Jackman's conviction, the "govern-

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1/ The Petitioner is not a defendant in a criminal case and therefore cannot rely upon the guarantees of the sixth amendment. Additionally, the protection of the Jury Selection and Service Act of 1968, 28 U.S.C. § 1861, is inapplicable because the Petitioner failed to file a sworn statement setting forth facts showing how the jury panel did not reflect a fair cross-section of the community, as is required by § 1867.

2/ It is unclear, however, exactly how the Respondents, as civil litigants, could have stepped into the shoes of the government for purposes of rebutting a prima facie showing. Nonetheless, the government successfully rebutted any presumption that existed at the pretrial hearing in Jackman. (Pet. App. at 23A).

ment's cross-examination established that the jury administrator had never intentionally excluded any potential juror from selection on account of race, or because 'they were of black or of Puerto Rican descent.'" (Pet. App. 23A) Simply put, the district court found as a matter of fact that while minorities were underrepresented in the pool of names from which the jury administrator chose, that flaw was not the product of intentional discrimination. To the contrary, the district court found, and the appellate court affirmed, that the mistake was inadvertent; until the hearing itself, the jury administrator believed that she was following the correct procedures. (Pet. App. 24A) Against this backdrop, the Petitioner can hardly claim that he is entitled to a new trial on the basis that he has raised vicariously an unrebutted presumption of discrimination.

Because the Petitioner has never claimed that there was intentional discrimination at play, and given that the district court expressly ruled as a matter of fact that there was no intentional discrimination at hand, the Petitioner's suggestion that there is ground for certiorari rings hollow.

The decision of the court of appeals does not conflict with applicable decisions of this Court.

II. The Petitioner Did Not Challenge The Alleged Improper Venire In A Timely Fashion

It is undisputed that the Petitioner did not challenge the racial composition of the venire until thirteen days after he had selected his jury. Thus, the Petitioner's challenge was untimely; his claim of error can be rejected on this basis as well.

The composition of the panel was noticeable to the Petitioner at the time of jury selection. The Petitioner,

however, remained silent, completed jury selection, and only then did he assert a challenge. The incongruity of this process is obvious. To ignore the untimely challenge is to condone juror shopping. Extended to its logical conclusion, the Petitioner could have waited for the jury's verdict and then, if not satisfied, challenged the composition of the venire. The Petitioner's equal protection challenge should have been raised prior to jury selection, as opposed to nearly two weeks after the jury had been impaneled and on the eve of trial. Certiorari should therefore be denied.

CONCLUSION

The Respondents respectfully submit that the petitioner has failed to demonstrate a basis for the Court to exercise its judicial discretion to grant the Petition for Writ of Certiorari. The Second Circuit Court of Appeals properly applied the law, and its decision in no way conflicts with applicable decisions of this Court.

The Respondents respectfully request that the Petition for Writ of Certiorari be denied.

Respectfully submitted

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